

No. 13058

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

A. F. LEVY, Administrator,

Appellant,

vs.

JOHN E. SISSON and DORIS FISCHER,

Appellees.

APPELLEES' BRIEF.

JOHN E. SISSON,

210 West Seventh Street,
Los Angeles 14, California,

Appellee Appearing in Propria Persona.

DORIS FISCHER,

1636 North Mariposa Avenue,
Los Angeles 27, California,

Appellee Appearing in Propria Persona.

FILED

DEC - 5 1951

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APPELLEES' BRIEF.

Statement of Pleadings and Facts.

Appellant, appearing in *propria persona*, filed a complaint labeled "DAMAGES \$5,412.16." Such complaint contains a conglomerate of many allegations in a single cause of action. Such complaint also contained as Exhibits A, B, D and E, none of which were copied into the "Transcript of Record" and same hence is incomplete. Exhibit A was a purported copy of the "Order Settling Fourth and Final Account, Report, Allowance of Statutory and Extraordinary Executrix's Commissions, Allowance of Statutory and Extraordinary Fees to Attorney, Authorization to Abandon Worthless Assets and for Distribution" in the Estate of Mathilde G. Mautner, Deceased, under probate proceedings number 179-836 in the Superior

Court of the State of California in and for the County of Los Angeles. Exhibit B consisted of a letter from John E. Sisson to appellant; answer thereto by appellant; letter of appellant to Doris Fischer; another letter by appellant to Doris Fischer; a series of computations; letter from Wm. F. Schwartz, Commissioner, Los Angeles Municipal Court to appellant; letter of appellant to Presiding Judge of Municipal Court. Exhibit D consists of a purported transcript of the Register of Actions—Mathilde G. Mautner, Deceased; and a purported copy of minutes of Superior Court. Exhibit E consists of a purported copy of a demurrer in case number 994-994 Municipal Court, City of Los Angeles, County of Los Angeles, State of California, entitled “A. F. Levy, Administrator of Estate of Carrie F. Levi, deceased, plaintiff, v. Doris Fischer, Commercial Casualty Insurance Company, and Heirs of the Estate of Mathilde Mautner, Deceased, Defendants”; and a purported copy of demurrer to first amended complaint in the same action.

A motion to dismiss and motion for judgment upon the pleadings was filed by both appellees and same was duly sustained by Justice James E. Carter on the grounds that the complaint failed to state a claim; and that the action did not arise under any Article or Section of the Constitution of the United States; and that no diversity of citizenship is shown or alleged.

Such Judgment of Dismissal Was Proper.

(a) Said Complaint Fails to State a Claim.

The complaint in this action contains no substantial relation of coherent facts and contains only a group of unrelated conclusions, impressions and scurrilous matter.

Under the circumstances where such a complaint fails to state a coherent cause of action or causes of action the same may be dismissed upon application.

See:

Sutton v. Eastern Viaui Co. (C. C. A., Ill, 1943),
138 F. 2d 959;

Picking v. Pennsylvania Railroad Company (D. C.,
Pa., 1944), 3 F. R. D. 425.

(b) The Amount in Controversy Is Insufficient.

Through many confused statements involved in such complaint, it will be found that the principal amount in controversy is an alleged distribution from an estate in the sum of \$375.98. This is far below the required amount of \$3,000.00 to confer jurisdiction in the United States District Court.

Where the amount in controversy is insufficient, the cause properly should be dismissed.

See:

Topping v. Fry (C. C. A., Ill., 1945), 147 F. 2d
715.

(c) No Federal Question Is Presented.

It would appear from the varied statements in the complaint that basically his complaints relate to disagreement and criticisms of judicial decisions of other courts of competent jurisdiction. The proper remedy in such instances is an appeal from such decisions. Appellant has not shown that he has in any respect or manner proceeded to exhaust his remedies in such proper forum. It is submitted that if appellant claims that his civil rights have been violated it is incumbent upon him first to show diligence and pursuit of the proper legal remedies available to him in the courts of proper jurisdiction. He cannot, without pursuit of any such remedies or procedure, apply to the District Court of the United States simply because he disagrees or challenges the decisions of such other courts.

It is submitted, therefore, that no federal question exists, and where such is the situation, the action should be dismissed.

See:

Scott v. Pennsylvania R. Co. (D. C., Pa., 1949),
8 F. R. D. 548:

Aralac Inc. v. Hat Corp. of America (C. C. A.,
Ill., 1948), 166 F. 2d 286.

(d) There Is No Diversity of Citizenship Presented.

In the first paragraph of his complaint, appellant alleges: "(Plaintiff) Being a resident of said County and State (Los Angeles County, California) and a citizen of the United States as the said named defendants John E. Sisson and Doris Fischer so are also."

Under the circumstances by his own pleading, appellant admits and concedes that appellant and appellees are residents of Los Angeles County, State of California, hence no diversity of citizenship exists to vest the Federal Courts of the United States with jurisdiction.

Where there is no diversity of citizenship and the cause of action rests primarily with the state courts, the court must properly dismiss such action.

See:

Polhemus v. American Medical Ass'n (C. C. A., N. M., 1944), 145 F. 2d 357.

Conclusion.

For the reasons stated, appellees contend that the action of the District Court in dismissing such complaint of appellant was entirely proper, and the judgment of such dismissal must be affirmed, and further, that such appeal be dismissed.

Respectfully submitted,

JOHN E. SISSON,

Appellee Appearing in Propria Persona.

DORIS FISCHER,

Appellee Appearing in Propria Persona.

